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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 SENORX, INC., ) CASE NO. C -01075 SC  
12 Plaintiff, )  
13 vs. )  
14 COUDERT BROTHERS, LLP; and DOES )  
15 1-500, inclusive, )  
16 Defendants. )  
17 )  
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**NOTICE OF, AND, PLAINTIFF'S  
OBJECTION TO REMOVAL AND  
MOTION TO REMAND OR ABSTAIN  
AND MEMORANDUM IN SUPPORT  
THEREOF**

Date: April 27, 2007  
Time: 10:00 am  
Ctrm: 1  
Judge: Honorable Samuel Conti  
  
Complaint Filed: October 27, 2004  
  
**FILED CONCURRENTLY HEREWITH**  
  
**DECLARATION OF GERALDINE  
WEISS; PROOF OF SERVICE;  
[PROPOSED] ORDER**

PLEASE TAKE NOTICE that on April 27, 2007 at 10:00 a.m., in Department 1 of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiff SenoRx, Inc. ("Plaintiff") will move this Court for an Order to Remand this action to the Superior Court of the County of San Francisco, State of California, in which it was originally filed by Plaintiff.

///

1 Plaintiff bases this Remand Motion upon this Notice of Motion, the attached  
2 Memorandum of Points and Authorities, the Declaration of Geraldine Weiss with  
3 attached exhibits, all of the files and records in this action and such additional  
4 arguments or matters as may be offered at the hearing on this Motion.

5 || Dated: March 22, 2007.

## LAW OFFICES OF MICHAEL J. PIUZE

BY

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Geraldine Weiss  
Attorney for Plaintiff SeroRx,

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

1

## **INTRODUCTION**

4 Plaintiff SenoRx, Inc. moves to have this case remanded to the California Superior  
5 Court, County of San Francisco, in which it was originally and properly filed, because the  
6 case is non-core to the bankruptcy proceeding brought by Defendant Coudert Brothers  
7 LLP (“Coudert Brothers”) and is purely a state-law-based action properly before the  
8 California Superior Court. Accordingly, Plaintiff asserts that this Court must abstain from  
9 hearing this action, or, alternatively, may invoke discretionary abstention and equitable  
10 remand. In any case, remand is the appropriate result.

11

## 1. BACKGROUND

13 On August 15, 2001 in San Francisco, California Plaintiff SenoRx, Inc. retained the  
14 law firm Defendant/Debtor Coudert Brothers LLP, which included as partners all of the  
15 other Defendants, to represent it in regard to certain patent matters, including the filing of  
16 Canadian, European and Japanese patent applications. Coudert Brothers accepted such  
17 employment, agreed to represent Plaintiff and to do whatever was necessary to properly  
18 and timely file the patents. Fourth Amended Complaint at ¶ 12. Exhibit 1 to Weiss  
19 Declaration.

20 Defendants failed to exercise reasonable care, skill and diligence in their  
21 representation of Plaintiff by failing to properly and timely file said patent applications.  
22 Fourth Amended Complaint at ¶ 20. Plaintiff was not informed that its patent applications  
23 had not been properly and timely filed until October 27, 2003, at which time the law firm  
24 Defendant/Debtor Coudert Brothers LLP provided this information to Plaintiff. Fourth  
25 Amended Complaint at ¶ 21. As a result of Defendants' professional negligence, Plaintiff  
26 was, and is, unable to avail itself of, and benefit from, the patents that were not properly  
27 or timely filed, which has caused Plaintiff economic harm. Fourth Amended Complaint at

1 ¶ 22.

2 On October 27, 2004 Plaintiff SenoRx, Inc. filed this professional negligence action  
 3 in the California Superior Court, County of San Francisco. The complaint named Coudert  
 4 Brothers LLP and DOES 1 through 500. It was based solely upon California law. On  
 5 January 21, 2005 Coudert Brothers LLP answered. See, Notice of Removal of Action at  
 6 ¶ 1.

7 On November 3, 2005 and on January 25, 2006 Plaintiff filed DOE amendments  
 8 with respect to the complaint for purposes of substituting specifically named individual  
 9 defendants for fictitiously named defendants. These included, but were not limited to, the  
 10 Individual Partner Defendants who are former limited liability partners of Coudert Brothers  
 11 LLP. See, Notice of Removal of Action at ¶2.

12 Plaintiff also filed DOE amendments naming current and former California based  
 13 partners of Coudert Brothers LLP who are also California residents. These defendants  
 14 have not joined in the removal of this action. Weiss Declaration at ¶5.

15 In March 2006, some Individual Partner Defendants filed a demurrer. The California  
 16 Superior Court, County of San Francisco sustained the demurrer with leave to amend.  
 17 Some of the Individual Partner Defendants subsequently filed three additional demurrers,  
 18 each of which were sustained with leave to amend by the California State Court. See,  
 19 Notice of Removal of Action at ¶ 3.

20 On September 22, 2006, Coudert Brothers LLP filed a Chapter 11 Bankruptcy  
 21 Petition, in the United States Bankruptcy Court for the Southern District of New York  
 22 entitled In re Coudert Brothers LLP, Case No. 06-12226. See, Notice of Removal at ¶ 4.

23 No Removal was attempted.

24 On November 8, 2006 Plaintiff filed its Fourth Amended Complaint. Some of the  
 25 Individual Partner Defendants demurred again. On January 23, 2007 the California  
 26 Superior Court, County of San Francisco overruled their demurrer and ordered those  
 27 Defendants to file their Answer within 15 days. Exhibit 2, page 4 to Weiss Dec. In its  
 28

1 Order the California Superior Court, County of San Francisco stated:

2 "The issue before the Court is whether Plaintiff has pled facts sufficient to  
 3 state a cause of action against the individual partners ("Defendants") of  
 4 Coudert Brothers, LLP for the alleged legal malpractice of a former partner.

5 "The parties agree that **California Corporations Code §16956(a)(2)** sets  
 6 forth the security requirements applicable to law firms that operate as limited  
 7 liability partnerships in **California**. Plaintiff seeks to hold the individual  
 8 partners responsible, **pursuant to Corporations Code §16956(a)(2)(C)**, as  
 9 guarantors of the partnership's self-insured retention which is permissible  
 10 under **Corporations Code § 6956(a)(2)(A)**.

11 "An ultimate resolution of the issues raised in Defendants' Demurrer to  
 12 Fourth Amended Complaint **will involve dissecting the provisions of this**  
 13 **statute** and applying the fruits of that undertaking to the facts of this case.  
 14 The viability of Plaintiff's cause of action needs to be analyzed in a factual  
 15 context whether on a Motion for Summary Judgment/Summary Adjudication  
 16 or at trial.

17 "Having *sua sponte* reconsidered it prior Order Sustaining Demurrer to Third  
 18 Amended Complaint, the Court concludes that Plaintiff has pled sufficient  
 19 facts to state a cause of action against Defendants under the applicable  
 20 statute. Defendants Demurrer to Fourth Amended Complaint is overruled."

21 Exhibit 2, page 2-3, to Weiss Dec.. (emphasis added).

22 Now a Removal was attempted.

23 Only after the Court overruled their Demurrer to Plaintiffs' Fourth Amended  
 24 Complaint and ordered the demurring Individual Partner Defendants to answer, did they  
 25 remove this action. This occurred on February 21, 2007. Defendants based their removal  
 26 of this action upon the provisions of the Bankruptcy Code, 28 U.S.C. Sections 1452 and  
 27 1334 and Bankruptcy Rule 9027. See, Notice of Removal at ¶ 8.

28

1 Plaintiff agrees with Defendants that this is a non-core proceeding "as it is not a  
 2 cause of action created or determined by federal bankruptcy laws." See, Notice of  
 3 Removal at ¶ 9.

4 Plaintiff hereby moves for equitable remand or abstention and requests that this  
 5 action be transferred back to the California Superior Court, County of San Francisco, in  
 6 which it was originally and properly filed.

7 **II. LEGAL ARGUMENT**

8 **A. MOTION TO REMAND**

9 1. Jurisdiction under 28 U.S.C. 1452

10 Section 1452 provides for "removal of claims related to bankruptcy cases." Under  
 11 Section 1452(a), "[a] party may remove any claim or cause of action in a civil action . . .  
 12 to the district court for the district where such civil action is pending, if such district court  
 13 has jurisdiction of such claim or cause of action under section 1334 of this title." The  
 14 question in determining the propriety of removal jurisdiction under Section 1452(a) is  
 15 whether the action is "related to" a bankruptcy case. The Ninth Circuit has adopted the  
 16 following test, first articulated by the Third Circuit, for relatedness:

17 "The usual articulation of the test for determining whether a civil proceeding  
 18 is related to bankruptcy is whether the outcome of the proceeding could  
 19 conceivably have any effect on the estate being administered in bankruptcy.  
 20 Thus, the proceeding need not necessarily be against the debtor or against  
 21 the debtor's property.

22 "An action is related to bankruptcy if the outcome could alter the debtor's  
 23 rights, liabilities, options, or freedom of action (either positively or negatively)  
 24 and which in any way impacts upon the handling and administration of the  
 25 bankrupt estate." Fietz v. Great W. Sav., 852 F.2d 455, 457 (9th Cir. 1988)  
 26 (quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)) (emphasis  
 27 in original).

## 1 | 2. Remand on Equitable Grounds.

2        “[E]ven where federal jurisdiction attaches in actions ‘related to’ bankruptcy  
3 proceedings, Congress has explicitly provided for courts to find that those matters are  
4 more properly adjudicated in state court.” Williams v. Shell Oil Co., 169 B.R. 684, 690  
5 (S.D. Cal. 1994). Section 1452(b) provides for such equitable remand:

6        "The court to which such claim or cause of action is removed may remand  
7        such claim or cause of action on any equitable ground. An order entered  
8        under this subsection remanding a claim or cause of action, or a decision to  
9        not remand, is not reviewable by appeal or otherwise by the court of appeals  
10      under section 158(d), 1291, or 1292 of this title or by the Supreme Court of  
11      the United States under section 1254 of this title."

12 Courts have identified the following non-exclusive list of factors as relevant to  
13 determining whether to remand on equitable grounds: (1) the effect of the action on the  
14 administration of the bankruptcy estate; (2) the extent to which the issues of state law  
15 predominate; (3) the difficulty of applicable state law; (4) comity; (5) the relatedness or  
16 remoteness of the action to the bankruptcy case; (6) the existence of a right to jury trial;  
17 and (7) prejudice to the party involuntarily removed from state court. See, e.g., Williams,  
18 169 B.R. at 692–93.

19 a. Issues of State Law Predominate

20 Applying the preceding factors to the instant action, remand to the state court is  
21 appropriate. Plaintiffs' action exclusively involves issues of state law. All of Plaintiff's  
22 claims were brought under California law. No federal claims are asserted. "[W]hen a state  
23 court proceeding sounds in state law and bears a limited connection to a debtor's  
24 bankruptcy case, abstention is particularly compelling." Citigroup, Inc. v. Pac. Inv. Mgmt.  
25 Co., 296 B.R. 505, 509 (C.D. Cal. 2003) (internal citation omitted).

26 | //

27 | //

1                   b.     Comity

2                   Plaintiff and certain Defendants are California residents<sup>1</sup> and the professional  
 3 negligence occurred in California. "Comity dictates that California courts should have the  
 4 right to adjudicate the exclusively state law claims involving California-centric plaintiffs and  
 5 California-centric transactions." Citigroup, 296 B.R. at 509.

6                   c.     This Action is Remote to the Bankruptcy Proceeding

7                   There is little relation between the bankruptcy proceedings and Plaintiff's action.  
 8 This action involves professional negligence brought against many defendants, only one  
 9 of whom is a debtor. A transfer order, therefore, would have the effect of requiring the  
 10 bankruptcy court to resolve non-bankruptcy claims against non-debtor parties. The case  
 11 law advises against such a result.

12                  "[T]he potential danger arises that the court will be forced to resolve  
 13                  non-bankruptcy related issues between non-debtors. The courts have  
 14                  uniformly held that a bankruptcy court should avoid such a situation."

15                  Western Helicopters, Inc. v. Hiller Aviation, Inc., 97 B.R. 1, 6 (E.D. Cal.  
 16                  1988) (citations omitted).

17                  d.     Difficulty of Applicable State Law

18                  As the California Superior Court, County of San Francisco, noted in its Order  
 19 overruling the Individual Partner Defendants' Demurrer to Plaintiffs' Fourth Amended  
 20 Complaint, an ultimate resolution of the issues presented by this action "will involve  
 21 dissecting the provisions" of ***California Corporations Code §16956***. Order at pp.2-3, Ex.  
 22 "B" to Weiss Dec.

23                  As Plaintiff has alleged in its Fourth Amended Complaint, Section 16956(a)(2)  
 24 governed and governs limited liability partnerships that practice law in the State of  
 25 California. The purpose of this statute is to ensure adequate security for the creditors and

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27                  <sup>1</sup>See, Weiss Dec. ¶ 5.

1 potential creditors of an LLP. This included and includes Plaintiff SonoRx, Inc. The  
 2 statute allows an LLP to comply with one of three different methods of ensuring adequate  
 3 security: (1) maintain in accordance with Section 16956(a)(2)(A) liability insurance in the  
 4 amount of at least \$7,500,000; (2) maintain in accordance with Section 16956(a)(2)(B) in  
 5 trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations,  
 6 bank letters of credit, or bonds of insurance or surety companies as security or payment  
 7 of liabilities in the amount of at least \$7,500,000; and (3) have a net worth equal to or  
 8 exceeding fifteen million dollars (\$15,000,000) and to file confirmation of that fact. See,  
 9 Corp. C. §16956(a)(2)(A), (B), (C).

10 At all relevant times, Defendant Coudert Brothers, LLP (1) maintained liability  
 11 insurance policies that contained a deductible or self-insured retention of a minimum of  
 12 \$3,000,000; (2) failed to maintain in trust or bank escrow, cash, bank certificates of  
 13 deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance  
 14 or surety companies as security or payment of liabilities in the amount of at least  
 15 \$7,500,000; and (3) failed to have a net worth equal to or exceeding \$15,000,000 and  
 16 failed to file a confirmation of that fact.

17 Plaintiff maintains that California Corporations Code Section 16956(a)(2) also  
 18 required and requires in Subsection (C) that by virtue of their status as a partner of  
 19 Coudert Brothers, LLP, each attorney partner automatically guarantees payment of the  
 20 difference between the maximum amount of security required for the partnership and the  
 21 security otherwise provided under Subsections (A) and (B). Therefore, any gap in  
 22 coverage resulting from the deductible or self-insured retention of at least \$3,000,000, and  
 23 not covered by one or more of the other permissible mechanisms up to the maximum  
 24 amount of security required (\$15,000,000) is personally guaranteed by the attorney  
 25 partners of Defendant Coudert Brothers, LLP. Thus, these partners are proper party  
 26 defendants in this professional negligence action.

27 There are no California cases on point interpreting California Corporations Code  
 28

1 Section 16956(a)(2)'s proper application to the facts of this case, which adds to the  
 2 difficulty of this Court or the Bankruptcy Court in applying California law to the facts of this  
 3 case.

4       e.     Waste of Judicial Resources

5           The San Francisco Superior Court already devoted over two years of its time to this  
 6 action. During that period, the state court issued substantive rulings on Defendants'  
 7 demurrers. The state court also exhausted resources on case management. Failing to  
 8 remand will require a new court to expend resources getting up to speed on an action that  
 9 has been pending for over two years, a result that should be avoided. See, e.g., TIG Ins.  
 10 Co. v. Smolker, 264 B.R. 661, 667 (Bakr. C.D. Cal. 2001) ("The Los Angeles Superior  
 11 Court, having devoted many hours to the resolution of disputes in this matter over the  
 12 course of the last several years, is the most appropriate forum for the parties to litigate  
 13 these claims"). There are no concurrent benefit to the efficient administration of the  
 14 bankruptcy estate — adding these complicated state claims will only muddle the  
 15 bankruptcy proceedings. See, e.g., Western Helicopters, 97 B.R. at 7 ("In addition to the  
 16 unnecessary expense and expenditure of duplicative judicial resources, bifurcating this  
 17 civil claim creates the real danger of inconsistent results. Such a risk should be avoided  
 18 if there are no countervailing benefits"); Williams, 169 B.R. at 693 (finding that the  
 19 consolidation of products-liability claims with the bankruptcy proceedings "would unduly  
 20 burden the administration of the bankruptcy estate")

21       f.     Prejudice to Plaintiff

22           Plaintiff will be prejudiced in the absence of a remand, having spent considerable  
 23 resources prosecuting this action in state court, including engaging in motion practice and  
 24 conducting discovery. If this action is transferred to the Court in which Coudert Brothers  
 25 filed bankruptcy, Plaintiff will have to hire new counsel competent to practice in New York,  
 26 and this new counsel will have to expend time and resources learning the case. This  
 27 prejudice weighs in favor of equitable remand. See, e.g., TIG, 264 B.R. at 667 ("The

1 parties to the Action [other than the debtor] would be significantly prejudiced if they were  
 2 required to begin the education process anew with a new judge in a new court").

3 g. Jury Trial

4 Plaintiff requested a jury trial when it filed its original complaint. Exhibit 3 to Weiss  
 5 Declaration.

6 In cases where equitable remand is appropriate such as this one, courts have found  
 7 remand appropriate as to all defendants, rather than as to only the non-debtor defendants.  
 8 For example in TIG, the district court found that where the claims against the debtors and  
 9 non-debtors alike were based entirely on state law and where significant resources had  
 10 been

11 exhausted in state court as to claims against both sets of defendants, complete remand  
 12 was

13 appropriate. TIG, 264 B.R. at 667; see also Williams, 169 B.R. 694.

14 So too here. The state court expended over two years adjudicating the claims  
 15 against Coudert Brothers and the Individual Partner Defendants. The claims against  
 16 Coudert Brothers involve the same novel and complicated issues of state law described  
 17 above. The only difference is the absence of prejudice to Coudert Brothers, since Coudert  
 18 Brothers already has to participate in the New York bankruptcy proceedings. This lack of  
 19 prejudice does not mean, however, that somehow Plaintiff would benefit by splitting the two  
 20 actions. On the contrary, the division of this action into two actions would compound the  
 21 potential waste of resources that can only be avoided by remand. It would also heighten  
 22 the risk of inconsistent results. Thus, equitable remand is appropriate as to all defendants.

23 **B. ABSTENTION**

24 1. Mandatory Abstention

25 Under the express language of 28 U.S.C. 1334(c)(2) this Court is required by law  
 26 to abstain from hearing this case. Where there are non-debtor parties abstention is  
 27 mandatory. See, 1 Collier on Bankruptcy ¶ 3.06{4} (15<sup>th</sup> ed. Rev. 2003). There is no

1 bankruptcy jurisdiction over this case because the abstention provisions of 28 U.S.C. §  
 2 1334(c) qualify Section 1334(b)'s broad grant of jurisdiction." In re Dow Corning Corp., 86  
 3 F.3d 482, 497 (6<sup>th</sup> Cir 1996), cert denied 519 U.S. 1071 (1997).

4 Federal subject matter jurisdiction is provided by 28 U.S.C. § 1334(b) for civil  
 5 proceedings "arising in or related to" bankruptcy cases. Subsection (c)(2) of the same  
 6 section, however, instructs the district court to abstain from hearing such a case when  
 7 certain conditions are met. The statute reads:

8       Upon timely motion of a party in a proceeding based upon a State law claim  
 9       or State law cause of action, related to a case under title 11 but not arising  
 10      under title 11 or arising in a case under title 11, with respect to which an  
 11      action could not have been commenced in a court of the United States  
 12      absent jurisdiction under this section, the district court shall abstain from  
 13      hearing such proceeding if an action is commenced and can be timely  
 14      adjudicated, in a State forum of appropriate jurisdiction. 28 U.S.C. §  
 15      1334(c)(2).

16       In other words, the statute requires six criteria for mandatory abstention to apply:  
 17      1) a timely motion to abstain; 2) a state-law-based claim or cause of action; 3) such action  
 18      has already been commenced in state court; 4) the action can be timely adjudicated in that  
 19      state court; 5) there is no independent basis for federal jurisdiction absent bankruptcy; and  
 20      6) the matter before the court is non-core. In re Trans World Airlines, Inc., 278 B.R. 42, 50  
 21      (Bankr. D. Del. 2002). Each of these criteria is met in this case.

22       First, the motion to abstain is timely. Defendants removed the case to this Court  
 23      on February 21, 2007 and Plaintiff has filed the instant motion to remand on less than one  
 24      month after the removal. This is certainly timely, particularly because this Court has not  
 25      yet conducted any proceedings in this action.

26       Second, the case involves only state-law-based claims. The legal malpractice  
 27      claims asserted by Plaintiff against Defendants are founded entirely on California state

1 law.

2 Third, this case was commenced in a state court of appropriate jurisdiction. As  
3 already

4 noted, this proceeding was filed in the Superior Court of the State of California, County of  
5 San Francisco in 2004.

6 Fourth, the California Superior Court can timely adjudicate the action; there is no  
7 evidence whatsoever to the contrary. Section 1334(c)(2) does not require that the state  
8 court be intimately familiar with the parties or claims, or even that it be more familiar with  
9 these elements than the federal court to which the case was removed. The statute requires  
10 merely that the state court can timely adjudicate the action. See, e.g., Trans World  
11 Airlines, 278 B.R. at 51 ("[T]he issue under § 1334(c)(2) is not whether the action would  
12 be more quickly adjudicated in this Court than in the state court, but rather, whether the  
13 action can be timely adjudicated in the state court.") (emphasis in original). There is no  
14 valid suggestion that the California Superior Court cannot do so in this case.

15 Fifth, there is no independent basis for federal jurisdiction absent bankruptcy. Thus,  
16 because there is no diversity of citizenship or other independent basis for federal subject  
17 matter jurisdiction, the fifth requirement for mandatory abstention is met.

18 Sixth, the present action is not a core proceeding. The characterization of  
19 proceedings as

20 core or non-core is guided by the examples provided in 28 U.S.C. § 157(b)(2). "[A]  
21 proceeding is core under [28 U.S.C.] section 157 if it invokes a substantive right provided  
22 by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a  
23 bankruptcy case." In re Guild & Gallery Plus, Inc., 72 F.3d 1171, 1178 (3d Cir. 1996)  
24 (quoting In re Marcus Hook Dev. Park, Inc., 943 F.2d 261, 267 (3d Cir. 1991)). "If the  
25 proceeding does not invoke a substantive right created by the federal bankruptcy law and  
26 is one that could exist outside of bankruptcy it is not a core proceeding; it may be related  
27 to the bankruptcy because of its potential effect, but under section 157(c)(1) it is an  
28

1 "otherwise related" or non-core proceeding." Id. (quoting *In re Wood*, 825 F.2d 90, 97 (5th  
 2 Cir. 1987)).

3 This action does not involve any substantive rights provided by the Bankruptcy  
 4 Code. None of the examples of core proceedings provided by § 157 is present in the  
 5 instant action. Nor could any of the claims arise only in a bankruptcy case. Indeed, this  
 6 action was pending for two years before Defendant Coudert Brothers filed its bankruptcy  
 7 petition. Clearly, this action is non-core.

8 Because all of the criteria for mandatory abstention are present in this case, the  
 9 Court should abstain from hearing it. In the alternative, the Court should invoke  
 10 discretionary abstention and equitable remand.

11 2. Discretionary Abstention

12 The Court may in its discretion nonetheless abstain from hearing a matter in the  
 13 interest of justice, or in the interest of comity with state courts or respect for state law. 28  
 14 U.S.C. § 1334(c)(1). In *In re Tucson Estates, Inc.*, the Ninth Circuit identified twelve factors  
 15 that a court should consider when deciding whether to abstain:

- 16 1. the effect on the efficient administration of the estate;
- 17 2. the extent to which state law predominates over bankruptcy issues;
- 18 3. the difficulty or unsettled nature of the state law;
- 19 4. the presence of a related proceeding state court or other court;
- 20 5. the jurisdictional basis other than 28 U.S.C. § 1334;
- 21 6. the degree of relatedness to the main bankruptcy case;
- 22 7. the substance of the asserted core proceeding;
- 23 8. the feasibility of severing state law claims from core bankruptcy matters to allow  
 24 judgments to be entered in state court with enforcement left to the bankruptcy court;
- 25 9. the burden of the bankruptcy court's docket;
- 26 10. the likelihood that the commencement of the proceeding in bankruptcy court  
 27 involves forum shopping by one of the parties;

1 11. the existence of a right to a jury trial; and  
2 12. the presence in the proceeding of nondebtor parties. In re Tucson Estates, Inc.,  
3 912 F.2d 1162, 1167 (9th Cir. 1990).

#### 4 a. Efficient Administration.

5 It cannot be seriously argued that the Bankruptcy Court can more effectively  
6 administer these claims were it is unable to enter a final judgment and can only entertain  
7 a jury trial on the specific stipulation of the parties. Arguably jury trials would of necessity  
8 proceed in the United States District Court. This would not promote efficient administration  
9 of the estate.

10 || b. State Law Issues Predominate.

11 This factor is clearly applicable in this action for legal malpractice brought under  
12 California state law and also involves, as set forth in the California Superior Court's Order  
13 overruling Individual Defendants' Demurrer to Plaintiffs' Fourth Amended Complaint the  
14 proper interpretation of California Corporations Code Section **Corporations Code §16956**  
15 is vital to the resolution of Plaintiffs' claims against the Individual Partner Defendants.  
16 There are no federal law issues presented.

17      c.    The Difficulty or Unsettled Nature of State Law

18 As set forth above, this action involves the proper application of California  
19 Corporations Section 16956(a)(2) to the facts of this case and there are no California  
20 cases on point to guide this Court or the Bankruptcy Court.

21 d. Presence of Related Proceeding in State Court.

22 The state court action is filed and was proceeding at the time of the removal.

23 || e. Lack of Federal Jurisdiction.

24           Absent § 1334 this Court would have no jurisdiction over the parties and subject  
25           matter of this case.

26 f. Feasibility of Severing Claims Determination from Enforcement.

27 Clearly this is feasible in this situation, since once the claims are determined by a

1 state court jury, the bankruptcy court would address how claims are to be paid.

2 g. Forum Shopping.

3 There can be no misunderstanding that Defendants have removed this action to  
4 gain advantage in litigation and to attempt to deprive Plaintiff of its right to a jury trial.  
5 Defendants removed this action only after the California Superior Court overruled the  
6 Individual Partner Defendants' Demurrer to Plaintiff's Fourth Amended Complaint and  
7 ordered Defendants to answer.

8 h. Right to a Jury Trial.

9 The plaintiffs clearly have a right to a jury trial under applicable law. See, 28 U.S.C.  
10 1411.

11 i. Non Debtor Parties.

12 All but one Defendant, Coudert Brothers, Inc., are non-debtor defendant parties.

13 j. Summary.

14 The remaining factors also favor remand or abstention or at the very least are  
15 neutral in their application.

16 k. Ninth Circuit Policy.

17 The Ninth Circuit has stated that there is a clear policy to be followed to give state  
18 court litigants the right to have claims heard in state court. In re Castlerock Properties ,  
19 781 F.2d 159, 163 (9<sup>th</sup> Cir. 1986).

20 As set forth herein, remand is appropriate, and this Court should remand this  
21 adversary proceeding to the California Superior Court, County of San Francisco.

22 III.

23 **CONCLUSION**

24 Plaintiff's claims for relief asserted against Defendant Coudert Brothers, LLP and  
25 the Individual Partner Defendants in this adversary proceeding are non-core proceedings  
26 related to Debtor Coudert Brothers, LLP Chapter bankruptcy case.

27 ///

1 In the interest of comity with the State court and respect for State law, on equitable  
2 grounds, and to preserve scarce judicial resources, Plaintiff's removed claims in this  
3 adversary proceeding should be remanded to the Superior Court of the State of California,  
4 County of San Francisco, pursuant to the Court's broad authority as set forth above.

5 || Dated: March 22, 2007

LAW OFFICES OF MICHAEL J. PIUZE

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